

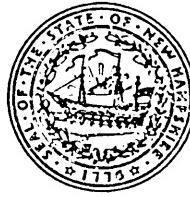
83-170-I

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
PETER W. MOSSEAU

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.



ASSISTANT ATTORNEYS GENERAL
LESLIE J. LUDTKE
ANDREW L. ISAAC
RONALD F. RODGERS
G. DANA BISBEE
PETER T. FOLEY
STEVEN M. HOURAN
JEFFREY R. HOWARD
EVE H. OYER
GREGORY W. SWOPE
JAMES D. CAHILL, III
CHARLES W. GRAU
DANIEL J. MULLEN
T. DAVID PLOURDE

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ATTORNEYS
EDNA M. CONWAY
AMY L. IGNATIUS
ROBERT B. MUH
DAVID K. MULHERN
JAMES A. SWEENEY

February 27, 1984

Dr. Neal Andrew, Deputy Commissioner
Department of Education
410 State House Annex
Concord, New Hampshire 03301

Dear Dr. Andrew:

You have requested this office's advice regarding the responsibility of local school boards to supervise home education programs for pupils sixteen years or older. Under the compulsory attendance law, RSA 193:1, public school attendance is required for all children between the ages of six and sixteen. The compulsory attendance law may be satisfied by an approved home education program. RSA 193:3 authorizes the state board of education to "permit such child to withdraw from school attendance" or to "make other such orders with respect to the attendance of such child at school as in its judgment the circumstances require." By regulations promulgated under the authority of RSA 193:3, the state board of education has delegated its approval authority over home education programs to local school boards. Part Ed. 315. The regulations establish specific criteria upon which approval of a home education program must be based.

The question you pose relates to the effect of RSA 189:1-a on the approval authority of a local school board. RSA 189:1-a makes it the "duty of the school board to provide, at district expense, elementary and secondary education to all pupils who reside in the district until such time as the pupil has acquired a high school diploma or has reached the age of 21, whichever occurs first...." Your question pertains to whether the duty to provide an education until age twenty-one implies a corresponding duty to supervise a home education program until the student reaches age twenty-one. We conclude that it does not.



Dr. Neal Andrew, Deputy Commissioner
Page 2
February 27, 1984

The regulations governing approval of home education programs by local school boards are designed to satisfy attendance requirements, and do not purport to set program standards. Under Part Ed. 315, the authority of the local school board to supervise a home education program derives from the state board's authority under RSA 193:3 to permit children to withdraw from school attendance. If the state board cannot compel attendance because the child is not between six and sixteen years of age, it cannot delegate authority under the mandatory attendance laws to the local school board to approve home education programs, as a method of permitting children to withdraw from school attendance.

— However, under RSA 186:11,XXXIX, the state board may, upon the request of a non-public school, "approve or disapprove its education program and curriculum." Therefore, if the "home education" program qualifies as a non-public school, it may request a continuation of its approved status under Ed. 402.24 until the child becomes 21 years of age or receives a diploma. Program approval must be requested from the state department of education. The regulations of the state board of education do not delegate program approval to local school districts.

Ed. 401.01 defines a non-public school as "a school duly approved under these regulations as adopted by the state board and which is established by an individual or group other than the state...and whose operation...rests with those officials who have not been publicly elected or appointed." Tutorial programs are generally excluded from the definition of non-public schools. Part Ed. 401.05(a)(3) defines tutorial program and provides that, "As a general rule, parents may not tutor or provide for the tutoring of their own children or those children under their care or custody as a means of compliance with New Hampshire's compulsory attendance law." The requirement stated in RSA 189:1-a that the local school board provide education beyond the age of sixteen does not, in itself, authorize the local school board to supervise home education for a coterminus period. All that RSA 189:1-a requires is that an elementary and secondary public education be provided to all children in the district. Because home education programs are not equivalent to an "elementary or secondary" education, unless they are approved as non-public schools, the duty imposed upon the local board under RSA 189:1-a to provide this type of education does not translate into a duty to approve home education programs.

Dr. Neal Andrew, Deputy Commissioner
Page 3
February 27, 1984

I trust this has been responsive to your inquiry. If you have any further questions, please do not hesitate to contact me.

Very truly yours,


Leslie J. Lutke
Assistant Attorney General
Division of Legal Counsel

LJL/smj

83-170-I